

ORIGINAL

FILED

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

MAY 23 2014

U.S. COURT OF  
FEDERAL CLAIMS

1. Abrego, Elias
2. Acosta, Cristal
3. Acosta, Gerardo
4. Acosta, Ignacio
5. Acosta, Jacob
6. Acosta, Roxana
7. Agudio, Frank
8. Aguilar, Agustin
9. Aguilar, Marco
10. Aguirre, Eloy
11. Akins, Tommy
12. Akins, William
13. Aldaco, Roberto
14. Aldaco, Rolando
15. Alderman, Ryan
16. Allen, Michael
17. Almaguer, Juan
18. Alonso, David
19. Alvarez, Omar
20. Amell, Nicholas
21. Andersen, Erik

14-445C

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|-----------------------|---|
| 22. Anderson, Cary    | ) |
|                       | ) |
| 23. Anderson, Tracy   | ) |
|                       | ) |
| 24. Andrade, Eric     | ) |
|                       | ) |
| 25. Andrew, Edwin     | ) |
|                       | ) |
| 26. Antu, Edoardo     | ) |
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| 27. Anzaldua, Adrian  | ) |
|                       | ) |
| 28. Araiza, Jesus     | ) |
|                       | ) |
| 29. Arana, Gus        | ) |
|                       | ) |
| 30. Aranda, Danny     | ) |
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| 31. Armienti, Daniel  | ) |
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| 32. Arredondo, Jesus  | ) |
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| 33. Arredondo, Mark   | ) |
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| 34. Arteaga, Remberto | ) |
|                       | ) |
| 35. Austin, Rene      | ) |
|                       | ) |
| 36. Avila, Maximino   | ) |
|                       | ) |
| 37. Axelson, Brian    | ) |
|                       | ) |
| 38. Ayala, Juan       | ) |
|                       | ) |
| 39. Bachert, Keith    | ) |
|                       | ) |
| 40. Ball, Michael     | ) |
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| 41. Bano, Bela        | ) |
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| 42. Barcomb, Timothy  | ) |
|                       | ) |
| 43. Barker, Douglas   | ) |
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| 44. Barney, Shad      | ) |
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| 45. Barquin, Gilberto | ) |
|                       | ) |
| 46. Barragan, Gabriel | ) |
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| 47. Barrera, Hugo     | ) |
|                       | ) |
| 48. Barrera, Isaac    | ) |
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| 49. Barrera, Manuel   | ) |
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| 50. Barron, Daniel    | ) |
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| 51. Barron, Jorge     | ) |
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| 52. Bauman, Adam      | ) |
|                       | ) |
| 53. Bazan, Horacio    | ) |
|                       | ) |
| 54. Behare, Sean      | ) |
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| 55. Benitez, Enrique  | ) |
|                       | ) |
| 56. Bennett, Brian    | ) |
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| 57. Benzler, Brian    | ) |
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| 58. Berrones, Jose    | ) |
|                       | ) |
| 59. Berry, Patrick    | ) |
|                       | ) |
| 60. Billings, Bryan   | ) |
|                       | ) |
| 61. Birchard, Adam    | ) |
|                       | ) |
| 62. Blanco, Jerrold   | ) |
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| 63. Blanquet, Jose    | ) |
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| 64. Blount, Jeremiah  | ) |
|                       | ) |
| 65. Bolender, Thomas  | ) |
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| 66. Bonsell, Aaron    | ) |
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| 67. Bordeaux, Curtis  | ) |
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| 68. Bowen, Mark         | ) |
|                         | ) |
| 69. Brogni, Christopher | ) |
|                         | ) |
| 70. Brooks, Jeffery     | ) |
|                         | ) |
| 71. Brown, Paul         | ) |
|                         | ) |
| 72. Buchanan, Archie    | ) |
|                         | ) |
| 73. Bumgarner, Jacob    | ) |
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| 74. Bumiller, Eric      | ) |
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| 75. Burton, Chisum      | ) |
|                         | ) |
| 76. Bushless, John      | ) |
|                         | ) |
| 77. Buyo, Juan          | ) |
|                         | ) |
| 78. Caballero, Nicolas  | ) |
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| 79. Caballero, Rolando  | ) |
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| 80. Cadena, Luis        | ) |
|                         | ) |
| 81. Calderon, Miguel    | ) |
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| 82. Caldon, Sean        | ) |
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| 83. Calvillo, Jorge     | ) |
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| 84. Camarena, Angel     | ) |
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| 85. Camarena, Antonio   | ) |
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| 86. Campos, Lucio       | ) |
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| 87. Cancino, Daniel     | ) |
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| 88. Cardoza, Alberto    | ) |
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| 89. Carillo, Joe        | ) |
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| 90. Carillo, Kevin      | ) |
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| 91. Carlson, Aaron        | ) |
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| 92. Carlton, Robert       | ) |
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| 93. Carmon, Scott         | ) |
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| 94. Carnot, Juan          | ) |
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| 95. Carreon, Valente      | ) |
|                           | ) |
| 96. Carriaga, Francisco   | ) |
|                           | ) |
| 97. Carrillo, Felipe      | ) |
|                           | ) |
| 98. Carrillo, Gabriel     | ) |
|                           | ) |
| 99. Carrizales, Alejandro | ) |
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| 100. Caruthers, Kevin     | ) |
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| 101. Castillo, Emily      | ) |
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| 102. Castillo, Eric       | ) |
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| 103. Castillo, Jeremy     | ) |
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| 104. Castillo, Jose       | ) |
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| 105. Castillo, Melissa    | ) |
|                           | ) |
| 106. Castillo, Ruben      | ) |
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| 107. Castro, Hector       | ) |
|                           | ) |
| 108. Ceja, Adalberto      | ) |
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| 109. Cereceres, Franco    | ) |
|                           | ) |
| 110. Cervantes, Ivan      | ) |
|                           | ) |
| 111. Chamness, David      | ) |
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| 112. Chavez, Carlos       | ) |
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| 113. Chavez, Domonic      | ) |
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| 114. Chavez, Eduardo       | ) |
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| 115. Chavez, Gerardo       | ) |
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| 116. Chavez, Lorena        | ) |
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| 117. Chavez, Victor        | ) |
|                            | ) |
| 118. Chong, Hugo           | ) |
|                            | ) |
| 119. Christoffels, Jessica | ) |
|                            | ) |
| 120. Christy, Ronald       | ) |
|                            | ) |
| 121. Claassen, Brian       | ) |
|                            | ) |
| 122. Clare, Justin         | ) |
|                            | ) |
| 123. Class, Gabriel        | ) |
|                            | ) |
| 124. Cobert, Thomas        | ) |
|                            | ) |
| 125. Cochran, David        | ) |
|                            | ) |
| 126. Cogswell, Matthew     | ) |
|                            | ) |
| 127. Collins, Sean         | ) |
|                            | ) |
| 128. Contreras, Salvador   | ) |
|                            | ) |
| 129. Cook, Heidi           | ) |
|                            | ) |
| 130. Coons, Andrew         | ) |
|                            | ) |
| 131. Cooper, Bryin         | ) |
|                            | ) |
| 132. Cooper, Clinton       | ) |
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| 133. Cordova, Ricardo      | ) |
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| 134. Cortez, Mario         | ) |
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| 135. Cortez, Pedro         | ) |
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| 136. Cortez, Ricardo       | ) |
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| 137. Costilla, Michael     | ) |
|                            | ) |
| 138. Covarrubias, Jose     | ) |
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| 139. Croy, Christopher     | ) |
|                            | ) |
| 140. Crutcher, David       | ) |
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| 141. Cruz, Homaet          | ) |
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| 142. Cruz, Miguel          | ) |
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| 143. Cuevas, Andres        | ) |
|                            | ) |
| 144. Curtis, Daryl         | ) |
|                            | ) |
| 145. Curtis, Matthew       | ) |
|                            | ) |
| 146. Custenborder, Gregory | ) |
|                            | ) |
| 147. Daniels, Kajoya       | ) |
|                            | ) |
| 148. Davila, Javier        | ) |
|                            | ) |
| 149. Davis, Wayne          | ) |
|                            | ) |
| 150. De Anda, James        | ) |
|                            | ) |
| 151. De la cruz, Emmanuel  | ) |
|                            | ) |
| 152. De La Rosa, Alejandro | ) |
|                            | ) |
| 153. De La Torre, Marcus   | ) |
|                            | ) |
| 154. De Leon, Jason        | ) |
|                            | ) |
| 155. De Leon, Santiago     | ) |
|                            | ) |
| 156. Delafuente, Juan      | ) |
|                            | ) |
| 157. Deleon, Arnold        | ) |
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| 158. Deleon, Domingo       | ) |
|                            | ) |
| 159. Delgadillo, Joseph    | ) |
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| 160. Delgado, Noel        | ) |
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| 161. Delgado, Timothy     | ) |
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| 162. Delintt, Daniel      | ) |
|                           | ) |
| 163. Denman, Dan          | ) |
|                           | ) |
| 164. Devowe, joshua       | ) |
|                           | ) |
| 165. Dewey, Scott         | ) |
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| 166. Di bella, Juan       | ) |
|                           | ) |
| 167. Diaz, Christian      | ) |
|                           | ) |
| 168. Diaz, Rafael         | ) |
|                           | ) |
| 169. Dion, Andrew         | ) |
|                           | ) |
| 170. Dominguez, Edwardo   | ) |
|                           | ) |
| 171. Dominguez, Robert    | ) |
|                           | ) |
| 172. Dominguez, Ruben     | ) |
|                           | ) |
| 173. Dooley, Christopher  | ) |
|                           | ) |
| 174. Dorsey, Justin       | ) |
|                           | ) |
| 175. Dudding, Christopher | ) |
|                           | ) |
| 176. Duprey, Brian        | ) |
|                           | ) |
| 177. Durbin, Donald       | ) |
|                           | ) |
| 178. Dvorak, Brian        | ) |
|                           | ) |
| 179. Dyson, Douglas       | ) |
|                           | ) |
| 180. Eckler, Jed          | ) |
|                           | ) |
| 181. Eddy, Micheal        | ) |
|                           | ) |
| 182. Eddy, Patrick        | ) |
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| 183. Edwards, Jeremy        | ) |
|                             | ) |
| 184. Elmore, Jason          | ) |
|                             | ) |
| 185. Elsarelli, Thomas      | ) |
|                             | ) |
| 186. Enriquez, John         | ) |
|                             | ) |
| 187. Escamilla, Eloy        | ) |
|                             | ) |
| 188. Escamilla, Ricardo     | ) |
|                             | ) |
| 189. Escobedo, Isaias       | ) |
|                             | ) |
| 190. Escontrias, Jose       | ) |
|                             | ) |
| 191. Esparza, Alberto       | ) |
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| 192. Esparza, Jesus         | ) |
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| 193. Esparza, Jose          | ) |
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| 194. Espinoza, Joe          | ) |
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| 195. Estrada, Victor        | ) |
|                             | ) |
| 196. Ewing, Ned             | ) |
|                             | ) |
| 197. Farias, Marcos         | ) |
|                             | ) |
| 198. Faz, Ismael            | ) |
|                             | ) |
| 199. Fernandez, Jorge       | ) |
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| 200. Fernandez Soto, Carlos | ) |
|                             | ) |
| 201. Flores, Abraham        | ) |
|                             | ) |
| 202. Flores, Adrian         | ) |
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| 203. Flores, Eduardo        | ) |
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| 204. Flores, Francisco      | ) |
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| 205. Flores, Jose           | ) |
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| 206. Flores, Ricardo    | ) |
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| 207. Flores, Rolando    | ) |
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| 208. Flores, Wilbert    | ) |
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| 209. Folsom, Gregory    | ) |
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| 210. Fonseca, Jose      | ) |
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| 211. Fonseca, Stefan    | ) |
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| 212. Ford, David        | ) |
|                         | ) |
| 213. Foster, Allen      | ) |
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| 214. Franco, Antonio    | ) |
|                         | ) |
| 215. Franco Jr, Jorge   | ) |
|                         | ) |
| 216. Frank, Christopher | ) |
|                         | ) |
| 217. Fraser, Clinton    | ) |
|                         | ) |
| 218. Friend, Claude     | ) |
|                         | ) |
| 219. Frisco, John       | ) |
|                         | ) |
| 220. Fuller, Glenn      | ) |
|                         | ) |
| 221. Galindo, Jesus     | ) |
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| 222. Galkowski, Stephen | ) |
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| 223. Gallegos, Celso    | ) |
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| 224. Gallegos, Daniel   | ) |
|                         | ) |
| 225. Gamez, Marco       | ) |
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| 226. Garcia, Allan      | ) |
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| 227. Garcia, Christian  | ) |
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| 228. Garcia, Daniel     | ) |
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| 229. Garcia, Hector          | ) |
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| 230. Garcia, Israel          | ) |
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| 231. Garcia, Jorge           | ) |
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| 232. Garcia, Mario           | ) |
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| 233. Garcia, Nicolas         | ) |
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| 234. Garcia, Ramon           | ) |
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| 235. Garcia, Refugio         | ) |
|                              | ) |
| 236. Garcia, Reynaldo        | ) |
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| 237. Garcia, Rogelio         | ) |
|                              | ) |
| 238. Gardner, Timothy        | ) |
|                              | ) |
| 239. Garland, Gerald         | ) |
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| 240. Garza, David            | ) |
|                              | ) |
| 241. Garza, Francisco        | ) |
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| 242. Garza, Hector           | ) |
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| 243. Garza, Mauricio         | ) |
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| 244. Garza, Ricardo          | ) |
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| 245. Garza (Espinoza), Zayra | ) |
|                              | ) |
| 246. Garza Castillo, Juan    | ) |
|                              | ) |
| 247. George, Andrew          | ) |
|                              | ) |
| 248. Gibson, Timothy         | ) |
|                              | ) |
| 249. Gill, Harold            | ) |
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| 250. Gill, Thomas            | ) |
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| 251. Gilmore, David          | ) |
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| 252. Gilson, Scott      | ) |
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| 253. Godreau, Robert    | ) |
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| 254. Golden, Craig      | ) |
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| 255. Gomez, Cesar       | ) |
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| 256. Gomez, Enrique     | ) |
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| 257. Gomez, Israel      | ) |
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| 258. Gomez, Juan        | ) |
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| 259. Gonzales, Esteban  | ) |
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| 260. Gonzales, Hector   | ) |
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| 261. Gonzales, Johnny   | ) |
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| 262. gonzalez, Alberto  | ) |
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| 263. Gonzalez, Alberto  | ) |
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| 264. Gonzalez, David    | ) |
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| 265. Gonzalez, Delvin   | ) |
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| 266. Gonzalez, Eduardo  | ) |
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| 267. Gonzalez, Emmanuel | ) |
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| 268. Gonzalez, Erick    | ) |
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| 269. Gonzalez, Ernesto  | ) |
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| 270. Gonzalez, Gonzalo  | ) |
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| 271. Gonzalez, Hugo     | ) |
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| 272. Gonzalez, Jesus    | ) |
|                         | ) |
| 273. Gonzalez, Marco    | ) |
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| 274. Gonzalez, Oscar    | ) |
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| 275. Gonzalez, Ricardo   | ) |
|                          | ) |
| 276. Gonzalez, Roel      | ) |
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| 277. Gonzalez, Walter    | ) |
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| 278. Gossett, Richard    | ) |
|                          | ) |
| 279. Gower, Nathan       | ) |
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| 280. Grainger, David     | ) |
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| 281. Granado, Carlos     | ) |
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| 282. Gregg, Michael      | ) |
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| 283. Gregory, William    | ) |
|                          | ) |
| 284. Guerra, Hector      | ) |
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| 285. Guerra, Rudy        | ) |
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| 286. Guerrero, Joseph    | ) |
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| 287. Guerrero, Santiago  | ) |
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| 288. Gutierrez, Abelardo | ) |
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| 289. Gutierrez, Ervey    | ) |
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| 290. Gutierrez, Joel     | ) |
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| 291. Gutierrez, Roberto  | ) |
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| 292. Guzman, Robert      | ) |
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| 293. Hale, Allen         | ) |
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| 294. Haley, Casey        | ) |
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| 295. Hall, David         | ) |
|                          | ) |
| 296. Hall, Richard       | ) |
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| 297. Haller, Kevin       | ) |
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| 298. Hamby, Neil          | ) |
|                           | ) |
| 299. Hammond, Thomas      | ) |
|                           | ) |
| 300. Harper, Scott        | ) |
|                           | ) |
| 301. Harris, John         | ) |
|                           | ) |
| 302. Hermosillo, Oscar    | ) |
|                           | ) |
| 303. Hernandez, Abran     | ) |
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| 304. Hernandez, Carlos    | ) |
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| 305. Hernandez, Francisco | ) |
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| 306. Hernandez, Hector    | ) |
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| 307. Hernandez, Jose      | ) |
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| 308. Hernandez, Manuel    | ) |
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| 309. Hernandez, Nestor    | ) |
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| 310. Hernandez, Ricardo   | ) |
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| 311. Hernandez, Roberto   | ) |
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| 312. Herrera, Cesar       | ) |
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| 313. Herrera, Juan        | ) |
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| 314. Herrera, Raymundo    | ) |
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| 315. Hibdon, Michael      | ) |
|                           | ) |
| 316. Hicks, David         | ) |
|                           | ) |
| 317. Hilbery, George      | ) |
|                           | ) |
| 318. Hill, David          | ) |
|                           | ) |
| 319. Hinojosa, Antonio    | ) |
|                           | ) |
| 320. Hinojosa, Armand     | ) |
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| 321. Hinojosa, Carlos       | ) |
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| 322. Hinojosa, Hector       | ) |
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| 323. Hinojosa, Juan         | ) |
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| 324. Hinojosa, Luis         | ) |
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| 325. Hoffman, Brendt        | ) |
|                             | ) |
| 326. House, Charles         | ) |
|                             | ) |
| 327. Housley, Shawn         | ) |
|                             | ) |
| 328. Hoyt, Gerald           | ) |
|                             | ) |
| 329. Huber, Eric            | ) |
|                             | ) |
| 330. Huerta, Jose           | ) |
|                             | ) |
| 331. Huffman, Galen         | ) |
|                             | ) |
| 332. Huffman, Timothy       | ) |
|                             | ) |
| 333. Huizar, Joe            | ) |
|                             | ) |
| 334. Humphrey, Thomas       | ) |
|                             | ) |
| 335. Huskey (Dunn), Shannon | ) |
|                             | ) |
| 336. Husted, Robert         | ) |
|                             | ) |
| 337. Igartua-soto, Moises   | ) |
|                             | ) |
| 338. Iniguez, Arturo        | ) |
|                             | ) |
| 339. Iniguez, Ramon         | ) |
|                             | ) |
| 340. Jager, Matthew         | ) |
|                             | ) |
| 341. Jalbert, Michael       | ) |
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| 342. Janikic, Daniel        | ) |
|                             | ) |
| 343. Jaramillo, Francisco   | ) |
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| 344. Jarmon, Mark        | ) |
|                          | ) |
| 345. Javery, Jon Paul    | ) |
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| 346. Jock, Robert        | ) |
|                          | ) |
| 347. Johnson, Jason      | ) |
|                          | ) |
| 348. Johnson, Kenneth    | ) |
|                          | ) |
| 349. Johnson, Michael    | ) |
|                          | ) |
| 350. Johnston, Douglas   | ) |
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| 351. Juarez, Enrique     | ) |
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| 352. Karcher, Darryl     | ) |
|                          | ) |
| 353. Katz, David         | ) |
|                          | ) |
| 354. Kemp, Sherman       | ) |
|                          | ) |
| 355. Kenyon, Jeremy      | ) |
|                          | ) |
| 356. Kiekhaefer, Michael | ) |
|                          | ) |
| 357. Kingston, Nicholas  | ) |
|                          | ) |
| 358. Kiniery, Matthew    | ) |
|                          | ) |
| 359. Kirkpatrick, Shayne | ) |
|                          | ) |
| 360. Klein, David        | ) |
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| 361. Kocian, Michal      | ) |
|                          | ) |
| 362. Koon, Michelle      | ) |
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| 363. Kraus, Christopher  | ) |
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| 364. Kuperus, Douglas    | ) |
|                          | ) |
| 365. Labady, Hugo        | ) |
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| 366. Labrado, Peter      | ) |
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367. Lalonde, Gregory  
368. Land, Troy  
369. Landrum, David  
370. Lapaglia, Dorian  
371. Lara, Adriana  
372. Layton, Michael  
373. Le Roy, Robert  
374. Lemay, Brian  
375. Lemos, Ramon  
376. Lerma, Carlos  
377. Leverett, Clifton  
378. Leyendecker, Fredrick  
379. Leyva, Francisco  
380. Lienhard, Jered  
381. Limon, Roque  
382. Linares, Jose  
383. Lindsey, Earl  
384. Lomax, Betsy  
385. Longest, Alfred  
386. Lopez, Adrian  
387. Lopez, Carlos  
388. Lopez, Eric  
389. Lopez, Gabriel

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| 390. Lopez, Jaime      | ) |
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| 391. Lopez, Jaime      | ) |
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| 392. Lopez, Luis       | ) |
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| 393. Lopez, Oscar      | ) |
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| 394. Lopez, Robert     | ) |
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| 395. Lopez, Salvador   | ) |
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| 396. Lorenzo, Javier   | ) |
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| 397. Loreto, Francisco | ) |
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| 398. Low, Derek        | ) |
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| 399. Lozada, Luis      | ) |
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| 400. Lozano, Jesus     | ) |
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| 401. Lozano, Ricardo   | ) |
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| 402. Lozoya, Luis      | ) |
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| 732. Watt, Daniel          | ) |
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| 733. White, Kevin          | ) |
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| 734. Whiteley, Chad        | ) |
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### **COMPLAINT**

1. The plaintiffs are employees of the defendant United States Government, who are employed at Customs and Border Protection, Department of Homeland Security as border patrol agent canine handlers. Plaintiffs bring this action on behalf of themselves and other employees similarly situated for a declaratory judgment, backpay and other relief, pursuant to 29 U.S.C. § 216(b), 29 U.S.C. § 1331, 28 U.S.C. § 1346(a)(2) and 28 U.S.C. §§ 1491, 2201 and 2202, 5 U.S.C. § 5596, and the overtime provisions of Title 5 of the U.S. Code, 5 U.S.C. §§ 5541, *et. seq.*, and the Fair Labor Standards Act (FLSA), 29 U.S.C. § 207 to remedy the defendant's willful and unlawful violations of federal law complained of herein.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1346(a)(2), 28 U.S.C. § 1331, 28 U.S.C. § 1491, and 29 U.S.C. § 216(b). Venue is proper pursuant to 28 U.S.C. § 1402.

### **PARTIES**

3. Plaintiff Juan Herrera, is employed as a border patrol agent at the Chula Vista Station in the San Diego Sector of Customs and Border Protection, Department of Homeland Security (hereinafter "CBP"). Plaintiff Douglas Dyson is employed as a border patrol agent at the Campo station in the San Diego Sector of CBP. Jorge Franco is employed as a border patrol agent at the Campo Station in the San Diego Sector of CBP. Derrick Neckle is employed as a border patrol agent at the Brownfield Station in the San Diego Sector of CBP. Gus Customborder is employed as a border patrol agent

at the San Clemente Station in the San Diego Sector of CBP. Javier Davila is employed as a border patrol agent, Canine Instructor at the Boulevard Station in the San Diego Sector of CBP. Miguel Ponce de Leon is employed at the Sonoita Station in the Tucson Sector of CBP. Robert Guzman is employed as a border patrol agent at the Willcox Station in the Tucson Sector of CBP. David Gilmore is a border patrol agent who is employed at the Tucson Station in the Tucson Sector of CBP. Jorge Fernandez is employed as a border patrol agent at the Ajo Station in the Tucson Sector of CBP and who is also assigned to the Honor Guard. Marco Torres is employed as a border patrol agent Canine Instructor at the Willcox Station in the Tucson Sector of CBP. Enrique Juarez is employed as a border patrol agent at the Laredo North Station in the Laredo Sector of CBP. At all times material herein, each of the agents listed above are or have worked as canine handlers or canine instructors.

4. Additional persons who are plaintiffs in this action are also current or former border patrol agents in CBP employed at various stations within the Border Patrol Sectors as canine handlers or canine handler instructors and they have given their written consent to be party plaintiffs in this action pursuant to 29 U.S.C. § 216(b). This lawsuit only concerns the time that plaintiffs have worked as canine handlers or canine handler instructors. The consent forms are attached as Exhibit A. These written consent forms set forth each plaintiff's name and home address.

5. Each of the plaintiffs in this action is an "employee" within the meaning of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 203(e)(1).

6. The defendant Government of the United States is, and at all material times has been, a "public agency" and "employer" within the meaning of the FLSA, 29 U.S.C.

§ 203(x) and § 203(d). Defendant employs the plaintiffs and other employees in similar activities and has its principal place of business in Washington, D.C.

### **THE FLSA**

7. The Fair Labor Standards Act (FLSA) was first enacted by Congress in 1938 to protect workers and it was extended to Federal Government employees in 1974. The Act provides the basic labor protections for federal workers such as guaranteeing a minimum wage and overtime pay.

8. Employees covered by the FLSA must be paid at a rate of not less than one and one-half times their regular rate of pay for each hour worked in excess of 40 hours in a workweek. Agencies who adopt a work period of at least 7 days and not more than 28 days, are permitted to pay overtime compensation to federal agency employees pursuant to the hourly standards under section 7(k) of the Act, 29 U.S.C. § 207(k), provided that the employees are engaged in law enforcement activities, and that the employees also receive administratively uncontrollable overtime pursuant to 5 U.S.C. § 5545(c)(2). See 5 C.F.R. § 551.541. Under section 7(k) of the FLSA, in a 14-day work period, law enforcement employees who also receive AUO are entitled to FLSA overtime compensation at the rate of one and one-half their regular rate of pay for all hours that they are suffered or permitted to work in excess of 85.5 hours. *Id.*

9. The FLSA additionally contains protections enabling employees to assert these rights. Retaliation against employees seeking to be paid overtime is illegal under 29 U.S.C. § 215(a).

### **FACTS**

10. At all times material herein, the plaintiffs and other employees similarly

situated have been entitled to FLSA overtime pay for all hours of work in excess of 8 in a day and/or 40 in a work week or, for those time periods that the plaintiffs received AUO, they have been entitled to FLSA overtime pay for all hours of work in excess of 85.5 hours in a 14-day work period.

11. For federal employees such as plaintiffs, time spent in a paid, nonwork status, such as holiday, paid leave, compensatory time off, and excused absences, is considered "hours of work" for purposes of calculating overtime entitlement. 5 C.F.R. § 551.401(c).

12. Within the last three years and continuing to date, while working in the position of border patrol agent canine handler or canine handler instructor on behalf of defendant, plaintiffs' job duties are to perform work protecting and serving the public, protecting our nation's borders, apprehending persons entering the nation illegally, assisting other law enforcement agencies, making arrests, processing apprehended persons, tracking suspects, investigating and tracking smugglers, making arrests, testifying in court and in administrative tribunal, testifying before grand juries, capturing fugitives, gathering intelligence, and various other activities related to improving law enforcement and the immigration policies of the United States.

13. At all or some of the times material herein since May 23, 2011, as well as before, each of the plaintiffs has worked hours in excess of forty (40) hours per week and/or eight (8) hours a day.

14. At all or at least some times material herein since May 23, 2011, as well as before, plaintiffs have received administratively uncontrollable overtime (AUO) pay in percentages of between 10 percent and 25 percent of their basic pay pursuant to 5

U.S.C. § 5545(c)(2). At all times material herein that plaintiffs have received AUO pay, plaintiffs have worked hours in excess of 85.5 hours in a 14-day period.

15. At times material herein, and as reflected in defendant's payroll documents, defendant has on occasion, unilaterally reduced the percentages at which plaintiffs' AUO has been paid and on occasions, stopped paying plaintiffs any AUO pay whatsoever during certain pay periods. During the occasions in which defendant failed to pay any AUO whatsoever to plaintiffs, plaintiffs have worked overtime hours in excess of 8 hours a day and 40 hours a week, but defendant nonetheless has continued to calculate plaintiffs' FLSA pay utilizing the overtime standard pursuant to section 7(k) of the FLSA of 85.5 hours a pay period.

16. At all times material herein, defendant has suffered or permitted plaintiffs to care for their canines with such activities taking 1 hour per calendar day and such activities taken place off-duty at plaintiffs' places of residence and other off-duty locations. At all times material herein, but with the exceptions noted below, the canine handlers and canine handlers were paid for 1 hour of "suffer or permit" overtime per calendar day for the purpose of taking care of their assigned canine. However, periodically each year within the past 3 years various plaintiffs have been instructed at the end of the fiscal year to stop recording their full amount of time that they are suffered or permitted to care for their assigned canine and instead put down a much smaller amount such as 15 minutes, 30 minutes or 0 minutes. Various plaintiffs were so instructed despite the fact that the amount of time that the canine handlers were suffered or permitted to care for their assigned canines off-duty had not changed.

17. In addition, each plaintiff who works as a canine handler or canine handler

instructor is assigned a government vehicle in which to transport his assigned canine while on-duty. These vehicles are taken home each day and driven to and from the plaintiffs assigned work locations to their places of residence. While driving into work, plaintiff canine handlers are directed approximately 1-5 times a month, though sometimes more often, to respond directly to different work locations involving incidents rather than driving to the station. In addition, while driving to the station in their government vehicles, approximately 2-5 times a month, the canine handlers respond to emergency vehicles and incidents that they encounter coming into work. Although plaintiffs notify or are notified by CBP when responding to incidents, plaintiffs receive no compensation for this work time performed the official time that the plaintiffs' work shifts begin, although plaintiffs are arriving at work approximately 30-45 minutes before their assigned workday begins.

18. In addition, on days other than the days that plaintiffs respond to calls as set forth in paragraph 17 above, plaintiffs arrive at work approximately 15-20 minutes before their shifts officially start and are suffered or permitted to perform work without compensation. The types of uncompensated work plaintiffs perform before the start of their shifts include but are not limited to such activities as obtaining and gathering equipment getting water, breaking the dogs, gassing up the vehicle, exchanging information with the outgoing shift, checking in with and receiving pertinent information from their supervisors, checking agency emails regarding intelligence and activities in the sector as well as emails related to personnel matters, engaging in agency training activities on the computer, and related activities. Although this work time is routinely performed on a daily basis at all times material herein, defendant has failed to

compensate plaintiffs for this work time that plaintiffs have been suffered or permitted to perform before the official start time of their shifts.

19. Each of the twenty sectors within the Border Patrol has specialized units to perform such duties as search and rescue, smuggling interdiction, and similar types of law enforcement activities. In addition to unpaid work time that plaintiffs have been suffered or permitted to perform before the official start time of their shifts, plaintiffs who are assigned to special units are suffered or permitted to perform additional work after the time that their official 8 hour shift ends and have not been paid for certain post-shift hours to the extent that they exceed defendant's arbitrary cap on how much overtime it is willing to pay.

20. In addition to unpaid work time that plaintiffs have been suffered or permitted to perform before the official start time of their shifts, each plaintiff is assigned a minimum of one handgun, and certain other plaintiffs are, in addition to their handgun, assigned a rifle. Plaintiffs are required as part of their job to maintain and clean their guns, and to keep them in good working order. Plaintiffs clean and maintain their guns off-duty. The guns must be cleaned whenever they are exposed to the elements such as dust, dirt or water, or whenever they are fired. Cleaning and maintaining the guns which takes a minimum of 30 minutes per gun every 2 weeks period. Plaintiffs are not compensated for the time that they spend cleaning and maintaining their guns off-duty.

**CLAIMS FOR RELIEF FOR  
VIOLATIONS OF THE FAIR LABOR STANDARDS ACT**

**COUNT I**

**FAILURE TO PAY FLSA  
OVERTIME UNDER SECTION 7(k) OF THE ACT, 29 U.S.C. § 207(k)**



21. Plaintiffs incorporate by reference paragraphs 1 through 20 in their entirety and restate them herein.

22. In those pay periods in which plaintiffs have received AUO pay in percentages between 10 percent and 25 percent, defendant's failure to compensate plaintiffs for all hours that plaintiffs have been suffered or permitted to work — such as failing to compensate plaintiffs for activities performed before the official start time of their shifts, failing to pay plaintiffs for time spent caring for their assigned canines while off-duty, cleaning and maintaining their guns, failing to pay plaintiffs assigned to specialized units for time worked beyond the arbitrary caps on overtime established by defendant, and by otherwise failing and refusing to pay the plaintiffs and other employees similarly situated the overtime pay required under law — the defendant has violated, and is continuing to violate in a willful and intentional manner, the provisions of the FLSA. As a consequence, at all times material herein, the plaintiffs have been unlawfully deprived of overtime compensation and other relief for the maximum statutory period allowed under federal law.

23. As a result of the defendant's willful and purposeful violations of the FLSA and Title 5, there have become due and owing to each of the plaintiffs various amounts that have not yet been precisely determined. The employment and work records for each plaintiff are in the exclusive possession, custody and control of defendant and its public agencies and the plaintiffs are unable to state at this time the exact amounts owing to each of them. Defendant and its public agencies are under a duty imposed by the Government Accounting Office retention schedule, the FLSA (29 U.S.C. §211(c)) and various statutory and regulatory provisions to maintain and preserve payroll and

other employment records with respect to plaintiffs and other employees similarly situated from which the amounts of defendant's liability can be ascertained.

24. Pursuant to 29 U.S.C. § 216(b), plaintiffs are entitled to recover liquidated damages in an amount equal to their back pay damages for the defendant's failure to pay overtime compensation.

25. Pursuant to the Back Pay Act, 5 U.S.C. § 5596, plaintiffs are entitled to recover interest on their back pay damages for the defendant's failure to pay them overtime compensation.

26. Plaintiffs are entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b), the Back Pay Act, 5 U.S.C. § 5596 as well as other applicable laws and regulations.

## **COUNT II**

### **FAILURE TO PAY FLSA OVERTIME UNDER SECTION 7(a) OF THE ACT, 29 U.S.C. § 207(a)**

27. Plaintiffs incorporate by reference paragraphs 1 through 20 in their entirety and restate them herein.

28. Section 7(k) of the Fair Labor Standards Act, 29 U.S.C. § 207(k), may only be applied by federal agencies to calculate FLSA overtime for employees who are engaged in law enforcement activities **and** who receive either AUO or standby pay. 5 C.F.R. § 551.541(a). Employees who do not receive AUO and who are engaged in law enforcement activities are entitled to have their FLSA overtime compensation computed under section 7(a) of the Act, 29 U.S.C. § 207(a). Under section 7(a), federal employees, such as the plaintiffs, are entitled to receive FLSA overtime compensation on the basis of hours worked in excess of 8 hours a day or 40 hours a week. 5 C.F.R. §

551.501. For purposes of computing federal employees overtime pay under the FLSA, paid leave hours are counted as hours of work. 5 C.F.R. § 551.401.

29. On those occasions in which defendant unilaterally stopped paying AUO to plaintiffs, defendant nonetheless computed their FLSA overtime pay entitlement using the overtime standards of 85.5 hours in a 14-day pay period. By failing to compute plaintiffs' FLSA overtime pay entitlement pursuant to the hourly standards set forth under section 7(a) of the FLSA, 29 U.S.C. § 207(a), defendant has deprived plaintiffs of the overtime pay to which they are entitled under the law. By failing and refusing to pay the plaintiffs and other employees similarly situated the overtime pay required under law, the defendant has violated, and is continuing to violate in a willful and intentional manner, the provisions of the FLSA. As a consequence, at all times material herein, the plaintiffs have been unlawfully deprived of overtime compensation and other relief for the maximum statutory period allowed under federal law.

30. As a result of the defendant's willful and purposeful violations of the FLSA and Title 5, there have become due and owing to each of the plaintiffs various amounts that have not yet been precisely determined. The employment and work records for each plaintiff are in the exclusive possession, custody and control of defendant and its public agencies and the plaintiffs are unable to state at this time the exact amounts owing to each of them. Defendant and its public agencies are under a duty imposed by the Government Accounting Office retention schedule, the FLSA (29 U.S.C. §211(c)) and various statutory and regulatory provisions to maintain and preserve payroll and other employment records with respect to plaintiffs and other employees similarly situated from which the amounts of defendant's liability can be ascertained.

31. Pursuant to 29 U.S.C. § 216(b), plaintiffs are entitled to recover liquidated damages in an amount equal to their back pay damages for the defendant's failure to pay overtime compensation.

32. Pursuant to the Back Pay Act, 5 U.S.C. § 5596, plaintiffs are entitled to recover interest on their back pay damages for the defendant's failure to pay them overtime compensation.

33. Plaintiffs are entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b), the Back Pay Act, 5 U.S.C. § 5596 as well as other applicable laws and regulations.

### **COUNT III**

#### **FAILURE TO COMPLY WITH THE PROVISIONS OF TITLE 5 REGARDING ADMINISTRATIVELY UNCONTROLLABLE OVERTIME**

34. Plaintiffs incorporate by reference paragraphs 1 through 20 in their entirety and restate them herein.

35. Administratively Uncontrollable Overtime (AUO) is paid under 5 U.S.C. § 5545(c) as an alternative to payments for irregular overtime that would otherwise be owed under title 5 at 5 U.S.C. § 5542 (a). The percentages at which AUO is paid are determined by the number of overtime hours that an employee has worked. 5 C.F.R. § 550.154.

36. In addition, OPM has instructed federal agencies to establish policies on which to base the payment of AUO. 5 C.F.R. § 550.161. At all times material herein, Customs and Border Protection has established a policy in which, with some limited exceptions, a border patrol agent's AUO payments are based on the number of overtime hours worked in the preceding 3 months.

37. Defendant has violated the provisions of 5 U.S.C. § 5545, as well as rules and regulations of OPM, and the policies of Customs and Border Protection by instructing agents not to record the actual number of AUO hours that they have worked and, instead, artificially capping the number of hours that the agents report as AUO. By doing so, defendant has deprived the plaintiffs of the rights and protections of title 5 and acted arbitrarily and in derogation of the rules and regulations of Customs and Border Protection, resulting in monetary damages to plaintiffs by not being paid AUO at the percentages to which they have been entitled to be paid AUO pursuant to 5 C.F.R. § 550.154.

38. As a result of the defendant's violations of Title 5, there have become due and owing to each of the plaintiffs various amounts that have not yet been precisely determined. The employment and work records for each plaintiff are in the exclusive possession, custody and control of defendant and its public agencies and the plaintiffs are unable to state at this time the exact amounts owing to each of them. Defendant and its public agencies are under a duty imposed by the Government Accounting Office retention schedule, the FLSA (29 U.S.C. §211(c)) and various statutory and regulatory provisions to maintain and preserve payroll and other employment records with respect to plaintiffs and other employees similarly situated from which the amounts of defendant's liability can be ascertained.

39. Pursuant to the Back Pay Act, 5 U.S.C. § 5596, plaintiffs are entitled to recover interest on their back pay damages for the defendant's failure to pay them overtime compensation.

40. Plaintiffs are entitled to recover attorneys' fees and costs under the Back Pay Act, 5 U.S.C. § 5596 as well as other applicable laws and regulations.

WHEREFORE, the plaintiffs, on their own behalf and on behalf of others similarly situated, pray that this Court:

(a) Enter judgment declaring that the defendant has willfully and wrongfully violated its statutory obligations, and deprived each of the plaintiffs of their rights;

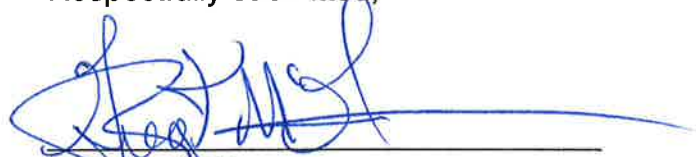
(b) Order a complete and accurate accounting of all the compensation to which the plaintiffs are entitled;

(c) Award each plaintiff monetary liquidated damages equal to their unpaid compensation, plus interest;

(d) Award plaintiffs their reasonable attorneys' fees to be paid by the defendant, and the costs and disbursements of this action; and

(e) Grant such other relief as may be just and proper.

Respectfully submitted,



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Counsel of Record

Dated: May 23, 2014

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